

DEPARTMENT OF AGRICULTURE
STATE OF SOUTH DAKOTA
SERVICE CONTRACT

SD-~~45~~ 10-11
PE 612

THIS AGREEMENT IS HEREBY made and entered into by and between the South Dakota Department of Agriculture, an agency of the State of South Dakota, 523 East Capitol Ave., Pierre, SD 57501-3182, (hereinafter "State") and **Pennington County Search and Rescue, of PO Box 391, Rapid City, SD 57709, (hereinafter "Contractor")**.

The State hereby enters into this Agreement for services with Contractor in consideration of and pursuant to the terms and conditions set forth below.

1. The Contractor will perform those services described in the Resource Work Plan, attached hereto as **Exhibit A** and by this reference incorporated herein.
2. The Contractor's services under this Agreement shall commence on the 1st **Day of May, 2010 and end on the 30th Day of April, 2011**, unless sooner terminated pursuant to the terms hereof.
3. The Contractor will not use State equipment, supplies or facilities. The Contractor will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.
4. The State will make payment for services upon satisfactory completion of the services. The contract amount is an amount not to exceed \$45,000.00 per calendar year, **with the TOTAL CONTRACT amount not to exceed \$45,000.00**. The State will not pay Contractor's expenses as a separate item. Payment will be made consistent with SDCL ch. 5-26.
5. The Contractor agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.
6. The Contractor, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Contractor shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

The Contractor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00 as is necessary or required by South Dakota Law.

C. Business Automobile Liability Insurance:

The Contractor shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

The Contractor shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Contractor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Contractor agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Contractor shall furnish copies of insurance policies if requested by the State.

7. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers, or documents related to services rendered under this Agreement. The Contractor will retain all books and records related to the services performed for a period of not less than the greater of any applicable federal law retention requirement or three years following termination of this Agreement.

8. While performing services hereunder, the Contractor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

9. Contractor agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Contractor or the State to liability. Contractor shall report any such event to the State immediately upon discovery.

Contractor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Contractor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.

10. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Contractor breaches any of the terms or conditions of this Agreement, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Contractor at the time

of termination may be adjusted to cover any additional costs to the State because of Contractor's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Contractor it is determined that Contractor was not at fault, then the Contractor shall be paid for eligible services rendered and expenses incurred up to the date of termination.

11. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

12. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

14. The Contractor will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

15. The Contractor may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Contractor will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Contractor will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

16. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. **Notices shall be given by and to Cindy Hansen, 4250 Fire Station Rd., Ste 2, Rapid City, SD 57703 on behalf of the State, and by Jeff Haberstroh, on behalf of the Contractor, or such authorized designees as either party may from time to time designate in writing.** Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

17. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

18. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

19. Contractor hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Contractor in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Contractor without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

20. The Contractor certifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Contractor further agrees that it will immediately notify the State if during the term of this Agreement Contractor or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

21. CONTRACTOR agrees to **furnish a cost statement or equipment use invoice to the Fire Business Accountant (address below)**, within 30 working days of the incident for all related expenditures that CONTRACTOR incurred and are related to damages or expenses associated with forest fire suppression or all risk activities. All original paperwork and/or payment documents and receipts must be submitted with the cost statement to:

Fire Business Accountant
South Dakota Wildland Fire Suppression Division
4250 Fire Station Road, Suite #2
Rapid City, SD 57703-8722

22. **Severity Patrol** and **Prescribed Burn** requests will be paid at 75% of the rate set for fire suppression.

23. Contract resources are not entitled to paid days(s) off upon release from the incident or at their point of hire.

24. **PROOF OF AUTHORITY TO SIGN:** If the contracting party is not a natural person, **evidence of authority** granted by the legal entity to the natural person who signs this agreement on behalf of the legal entity **must be attached hereto** as a condition precedent to any obligation by the State of South Dakota under the agreement. A copy of a resolution of the governing body or minutes of a regular meeting showing approval of the agreement or an ordinance approving the agreement and authorizing a named person to sign the agreement shall be adequate proof of authority.

Standard Service Contract Form
Revised March 2010

In Witness Whereof, the parties signify their agreement by signing below.

STATE

CONTRACTOR

BY:

Jon Farris
Jon Farris, Acting Secretary,
South Dakota Department of Agriculture

BY:

Jeff Haberstroh
NAME Jeff Haberstroh
TITLE Assist Team Leader

Dated this 7 Day of July, 2010

Dated this ___ Day of _____, 20__.

Standard form pre-approved by: (deviations require initials)

Reviewed by:

DOA Staff Attorney _____ (on ___ date)

Attorney General's Office _____ (on ___ date)

Risk Management _____ (on ___ date)

-State Agency Coding (MSA Center) _____.

- State Agency MSA Company for which contract will be paid _____.

-Object/subobject MSA account to which voucher will be coded _____.

-Name and phone number of contact person in State Agency who can provide additional information regarding this contract _____.

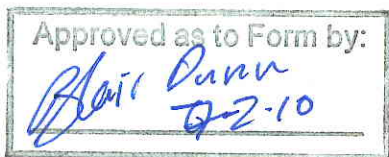


Exhibit A Resource Work Plan

Tuesday, August 10, 2010

Resource = Pennington County Search & Rescue

Resource	Pennington County Search & Rescue	Address	PO Box 391	Phone	605-394-2185	Agreement Date	05/01/2010 to 04/30/2011
Contact	Pennington County Dispatch		Rapid City SD 57709	Fax	605-394-2502	Agreement #	SD 09-10 PE612
Position	Call and Ask them to Page Team Leader		Pennington County			Type	Private

Equipment

Kind - Type	Unit #	Make	Cost	Guarantee	Unit	Misc Info
-			\$0.00	\$0.00	hour	
Command/Communications - PCSAR-1	Featherlight		\$40.00	\$0.00	hour	Comm/command trailer w/generator, cell phone. Incident will provide/reimburse for transportation to and from incident and fuel for generator if used.
Generator - PCSAR-2	Genevac GR-25		\$90.00	\$0.00	Day	25kw, Model #04058-0 Support Services: Generator. Light tower w/ 4 1000 watt lights. Incident will provide/reimburse for transportation to & from incident & fuel for generator.
Generator - Lighting	PCSAR-3	Honda 6KW	\$35.00	\$0.00	Daily	Available In-State Only, Has 20 ft Light Tower w/2 - 1000 watt flood lights. Incident will provide/reimburse for transportation to & from incident & fuel for generator.
Generator - PCSAR-4	Generac		\$250.00	\$0.00	Day	60 KW. Incident will provide/reimburse for transportation to and from incident and for fuel if generator is used.
GIS/Plans Trailer - PCSAR-5			\$50.00	\$0.00	Day	8 X 16 white enclosed Office/Plans trailer with lighting, A/C, tables and chairs and 4000 kilowatt generator. Copier, special rate of \$.03 per Copy. Incident will provide/reimburse for transportation to & from incident.
ATV - PCSAR-6	John Deere Gator		\$35.00	\$0.00	Day	4 X 6 Gator Pay mileage of \$.485 for delivery and pickup. Incident will provide/reimburse for transportation to and from incident and fuel for gator if used.
Communications - PCSAR-7	JPS Communications		\$90.00	\$0.00	Day	4 Radio Cross Link-trailer with Generator and 35' radio tower with 6 radio antennas. Incident will provide/reimburse for transportation to & from incident & fuel.
Office/Camper - Trailer	PCSAR-8	FRRV	\$35.00		Day	Incident will provide/reimburse for transportation to & from incident.
Suburban - Rescue 3	Chevrolet		\$0.49	\$0.00	Mile	\$57.00 Day When Used As Strike Team Leader, TFLD, DIVS, STPS vehicle, the incident will provide/reimburse for fuel.
Suburban - Rescue 4	Chevrolet		\$0.49	\$0.00	Mile	\$57.00 /day When Used As Strike Team Leader, TFLD, DIVS, STPS vehicle, the incident will provide/reimburse for fuel.
Suburban - Rescue 7	Chevrolet		\$0.49	\$0.00	Mile	\$57.00/day When Used As Strike Team Leader, TFLD, DIVS, STPS vehicle, the incident will provide/reimburse for fuel.